

WEBINAR

WEDNESDAYS



Wednesday, August 25, 2021

"Ghost Guns" and Violent Crime: Effective Prosecution Strategies

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“GHOST GUNS”: Fact, Fiction, and Successful Prosecution

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What is a “Ghost Gun”?

3

Ghost Gun Fiction



4

They are illegal

You can make them with a 3D printer

They can pass through airport screening and metal detectors

They are untraceable

5



Ghost Gun Facts

6

They are properly called PMF's

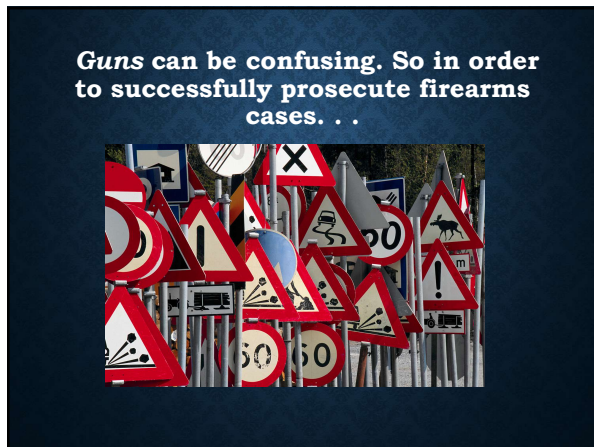
They are "Firearms" under State and Federal Law

They are legal to possess in Arizona

They are Detectable

They are Traceable

7



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You must understand the correct terminology used in this field.

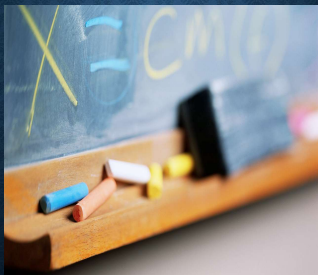
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Using the correct technical terms in the courtroom demonstrates confidence and expertise in your case.



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GUNS 101



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- All **firearms** are **guns** but not all guns are firearms
- The **frame (receiver)** of the firearm **IS** the firearm
- Handguns** (pistols/revolvers) have different rules than **Long guns** rifles/shotguns)
- A **magazine** holds unfired cartridges and although often detachable, remains attached during firing.
- A **clip** is disposable metal piece that aids loading cartridges into the weapon by holding individual cartridges together but usually doesn't stay attached to the firearm during firing.
- Ballistics** is the study of a projectile in flight.
- Toolmark identification** is a forensic specialty in a crime lab.

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-An **unfired round (cartridge)** explodes and separates into two items when the trigger is pulled. a **fired (spent) casing** and a **fired bullet**.

The **fired casing** stays in a revolver until manually removed. The fired casing is ejected from a semi-automatic pistol. The **bullet** heads downrange towards its target.

- A **Shell** is used in a shotgun, or found on the beach.

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“Ghost guns” are properly called
“Privately Made Firearms”.



So what is a Privately Made
Firearm?

(PMF)

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BATF proposed definition

- a “**privately made firearm**” (PMF) is a firearm, including a frame or **receiver**, assembled or otherwise produced by a person other than a licensed manufacturer, and *without a serial number or other identifying markings placed by a licensed manufacturer at the time the firearm was produced.*

*This means that a firearm assembled at home with a manufacturer's marked **receiver** produced by a licensed manufacturer is not a PMF

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80% KITS

The term "80% receiver" is a marketing term used generically to describe a frame or receiver that has not yet reached a *stage in manufacture* to be classified as a "frame or receiver" under Federal law.

The term has **no legal significance**.



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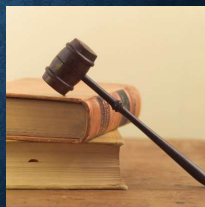


Modern "Glock" style frame kit with incomplete frame/receiver, commonly called "80% receivers"

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What is the legal authority to regulate firearms, including PMF's?

- United States Constitution
 - Article I Section 8
- Gun Control Act of 1968
 - 18 USC 922
 - BATFE regulatory agency
 - 27 CFR §478 *et seq.*
- Firearm Owners Protection Act of 1986
- An individual state's retained 10th Amendment police powers embodied in Arizona's Revised Statutes



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The United States Constitution

Article I, Section 8: “The Congress shall have Power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;”

19

The Commerce Clause

Wickard v. Filburn, 317 U.S. 111 (1942)

But even if activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this is irrespective of whether such effect is what might at some earlier time have

been defined as “direct” or “indirect.”



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United States v. Lopez, 514 U.S. 549 (1995)

“Section 922(q) is a criminal statute that by its terms has nothing to do with “commerce” or any sort of economic enterprise, however broadly one might define those terms. . . .

“To uphold the Government’s contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a **general police power of the sort retained by the states.**”



The Commerce Clause

“At issue in Lopez, was the validity of the Gun Free School Zones Act of 1990, which was a brief, single-subject statute making it a crime for an individual to possess a gun in a school zone.

The Act did not regulate any economic activity and did not contain any requirement that the **possession of a gun have any connection to past interstate activity** or a predictable impact on future commercial activity.”

Gonzales v. Raich, 545 U.S. 1, (2005)

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Following the assassinations of
President John F. Kennedy,
Senator Robert Kennedy,
and
Dr. Martin Luther King, Jr.,



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...Congress passed **The Gun Control Act of 1968**

The **GCA**, as amended, is the primary vehicle for federal regulation of firearms. The regulatory scheme primarily focuses on licensing and business activity due to its Commerce Clause roots.

The Bureau Of Alcohol, Tobacco, Firearms, and Explosives (**BATFE**) is the agency responsible for promulgating regulations to enforce the Act's provisions.



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Stated Goals of the Gun Control Act of 1968

"keep firearms out of the hands of those not legally entitled to possess them because of age, criminal background or incompetency, and assist law enforcement authorities in the states and their subdivisions in combating the increasing prevalence of crime in the United States."

To accomplish these goals, the **GCA**;

-Required individuals engaged in the business of dealing in firearms to obtain a federal license,

-Prohibited transfers of firearms to certain persons,

-Restricted the interstate transportation of firearms,

-Regulated the importation of certain firearms not suitable for sporting purposes.

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18 U.S.C. 921(a)(3) Definition of "firearm" under GCA

(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

(B) the frame or receiver of any such weapon;

(C) any firearm muffler or silencer; or

(D) any destructive device.

But not an antique firearm (made before 1898) or a replica of an antique, or a black powder muzzleloader

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18 USC § 922(g)

Unlawful for **certain class of persons** to possess any firearm that has moved in interstate commerce

18 USC § 922(k)

Generally unlawful to possess or receive any firearm that has moved in interstate commerce which contains an **altered or obliterated serial number**.

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The GCA made it unlawful for certain prohibited persons to possess a firearm;

Felons and Fugitives;

Drug addicts or unlawful drug users;

Persons committed to mental institutions or adjudicated as "mentally defective";

Persons dishonorably discharged from the armed forces;

Persons who have renounced their United States citizenship;

Illegal or nonimmigrant aliens;

Persons subject to certain domestic violence restraining orders; and

Persons convicted of misdemeanor crimes of domestic violence.

Anyone under a felony indictment

Juveniles under 18 years of age may not possess handguns

27

GCA regulates firearms through the business activities of a Federal Firearms Licensed dealer (FFL)

Illegal for an FFL to transfer a firearm knowing, (or should have known) that the transferee is prohibited from receiving the firearm.

- unlawful for any person to knowingly transfer a firearm to a prohibited person,

GCA makes it unlawful for an FFL to transfer a handgun to anyone under the age of 21, or a long gun to anyone under the age of 18.

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Code of Federal Regulations
27 CFR Parts 478 *et seq.*

In order to interpret and enforce the **GCA**, the BATFE has developed an extensive body of regulations;

-The regulations are promulgated under the Administrative Procedures Act through formal rule making authority.

-The regulations define many of the terms to determine legal and illegal conduct involving firearms,

29

Firearms Owners' Protection Act of 1986 (FOPA)

GCA was revised to not "place any undue or unnecessary Federal restrictions or burdens on law abiding citizens."

"engage in the business" of dealing in firearms now defined as:

-those who devote "time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms."

FOPA excluded those who buy and sell firearms:

- to "enhance a personal collection" or for a "hobby," or
- who "sell all or part of a personal collection."

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ARIZONA

Retained Police Powers




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Arizona Revised Statutes

Title 13- Criminal Code
Chapter 31 – Weapons & Explosives

Section 13-3101

- "Firearm"** means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will expel, is designed to expel or may readily be converted to expel a projectile by the action of an explosive. Firearm does not include a firearm in permanently inoperable condition.

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Arizona Revised Statutes

Title 13- Criminal Code
Chapter 31 – Weapons & Explosives
(summary)

Section 13-3101 **"Prohibited possessor"** means any person:

- (a) Found to constitute a danger to self/others or disability pursuant to court order and right not restored
- (b) Convicted of a felony or adjudicated delinquent for a felony and whose civil right has not been restored.
- (c) Possession while serving a term of imprisonment in any correctional or detention facility;
- (d) Possession while on probation/supervision for DV conviction or a felony offense or release on other basis;
- (e) Undocumented alien ; Except:
 - (i) Possess a valid hunting license
 - (ii) Participate in a competitive shooting event/ sports trade show
 - (iii) Certain diplomats.
 - (iv) Officials of foreign governments.
 - (v) Waiver from the U.S. Attorney General.
- (f) Incompetent, and who subsequently has not been found competent.
- (g) Found guilty except insane.

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Arizona Revised Statutes
 Title 13- Criminal Code
 Chapter 31 – Weapons & Explosives
 (Summary)

Section 13-3102. **Misconduct involving weapons; defenses; classification; definitions**

A person commits misconduct involving weapons by *knowingly*:

- Possessing a prohibited weapon by a prohibited possessor; or
- Selling/transferring a deadly weapon to a prohibited possessor; or
- Defacing a deadly weapon; or
- Possessing a defaced deadly weapon knowing the deadly weapon was defaced

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ARIZONA
 Commerce and Trade Regulations




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Arizona Revised Statutes
 Title 44- Trade and Commerce
 Chapter 36 – Private Firearms Transactions
 (Summary)

Section 44-7852. **Private party firearms transfer; state or political subdivision encumbrance prohibited**

- This state or any political subdivision of this state may not enact/implement any additional fee, tax, assessment, lien or other encumbrance on the transfer of a firearm between two private parties who are not prohibited possessors under state or federal law.

36

Arizona Revised Statutes
Title 13- Criminal Code
Chapter 31 – Weapons & Explosives
(summary)

13-3114. Arizona manufactured firearms; regulation; definitions

- A. a personal firearm, a firearm accessory or ammunition,
 - manufactured commercially or privately in this state,
 - remains within the borders of this state,is not subject to federal law or federal regulation, and is not considered to have traveled in interstate commerce.
- B. This applies to a firearm, a firearm accessory or ammunition that is manufactured in this state from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state.

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NOW THAT WE KNOW THE LAW...

HOW DO YOU KNOW A
"PRIVATELY MADE FIREARM"
WHEN YOU SEE ONE?

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On one end of the spectrum....

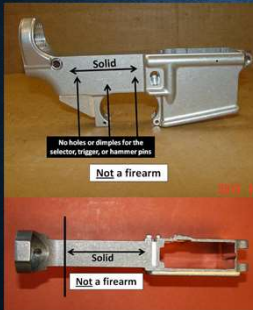
Receiver blanks, "castings" or "machined bodies" in which the fire-control cavity area is completely solid and un-machined have not reached a certain "stage of manufacture" and therefore are not a "firearm" subject to regulation under the GCA.

39

The key question is, has the receiver reached a stage of manufacture where significant machining operations are no longer required?



40



This is **not** considered to have reach the stage of manufacture to make it a “firearm”

41

This is considered to have reach the stage of manufacture to make it a “firearm”



42

On the other end of the spectrum...



Some parts kits contain most or all of the components (finished or unfinished) necessary to complete a functional weapon within a short period of time.

43



These kits may include jigs, instructions, and tools used to finish the weapon to a functional state with minimal effort, expertise, or equipment.

44

These parts kits are "firearms" under the GCA. They may readily be converted to expel a projectile by the action of an explosive.

Manufacturers of such parts kits **must be licensed** and abide by **federal marking/ recordkeeping** requirements.



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AR-15 style lower receiver kit
Unassembled, unmarked

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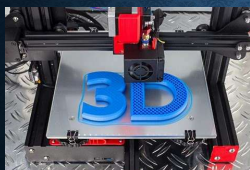
THIS IS A "FIREARM"

- Although weapon parts kits in their unassembled, incomplete, and/or unfinished state or configuration generally will not expel a projectile by the action of an explosive at the time of sale or distribution...
- ... weapon parts kits that are "designed to" or "may readily be converted" to expel a projectile by the action of an explosive are "firearms" under the **GCA**.



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3D Printing and PMF's



"ATF does not believe the production of 3D printed frames or receivers is substantial at this time when compared with commercially produced firearms."

48

Modern Firearms may contain some plastic parts, so a 3D printer can make them.

And a 3D printed firearm could be made to fire. . . the first time.



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But Firearms need Steel barrels.

A typical 9mm handgun cartridge generates **35,000** pounds per square inch when fired.

SECTION I - CHARACTERISTICS		CENTERFIRE PISTOL & REVOLVER									
CENTERFIRE PISTOL & REVOLVER		VELOCITY & PRESSURE DATA - TRANSDUCER									
SAAMI VOLUNTARY PERFORMANCE STANDARDS											
VELOCITY AND PRESSURE:											
VELOCITY & PRESSURE DATA - TRANSDUCER											
(See Vol. 1, Table 1)											
		Velocity				Transducer Pressure					
		(ft/sec)				(Solid test barrels psi/100')					
		Normal	Normal	Maximum	Maximum	Average	Peak	Peak	Peak	Peak	Peak
		Mean	Mean	Mean	Mean	Mean	Mean	Mean	Mean	Mean	Mean
		Instrumental	Instrumental	Instrumental	Instrumental	Instrumental	Instrumental	Instrumental	Instrumental	Instrumental	Instrumental
		@ 15'	@ 15'	@ 15'	@ 15'	@ 15'	@ 15'	@ 15'	@ 15'	@ 15'	@ 15'
		Velocity (ft/sec)	Velocity (ft/sec)	Velocity (ft/sec)	Velocity (ft/sec)	Pressure (MP)	Pressure (MP)	Pressure (MP)	Pressure (MP)	Pressure (MP)	Pressure (MP)
Cartridge	Bullet Weight (gr)										
9mm Luger	90	1,200									
	95	1,310									
	100	1,195									
	105	1,200									
	115	1,135				350	361	378			
	124	1,210									
	124	1,090									
	135	1,130									
	135	1,060									
	147	985									

50

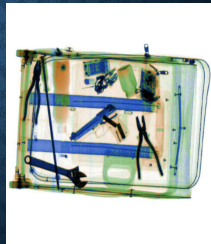


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A photograph showing several pieces of antique firearms, including long-barreled rifles and pistols, displayed horizontally against a light-colored background. The firearms are arranged in two rows. The top row features a long-barreled rifle with a dark, possibly black, finish and a long, straight barrel. Next to it is a shorter, wider firearm, possibly a shotgun or a different type of rifle, with a lighter, possibly brass or copper, finish. The bottom row features a long-barreled rifle with a dark finish, similar to the one in the top row, and a shorter, wider firearm with a lighter finish, similar to the one in the top row. The firearms are displayed against a light-colored, possibly stone or concrete, background.

[illegible]

A collection of antique firearms, including a large rifle, a shotgun, and several pistols, displayed in an open wooden case.

[illegible][illegible]

18

TWO TYPES OF FIREARMS TRACING



55

ADMINISTRATIVE TRACING

BATF traces firearms by first contacting the licensed manufacturer or importer marked on the frame.



56

Licensed manufacturer/importer records


Based on these permanent records, ATF then contacts each licensed dealer who recorded their handling of the firearm to locate the first unlicensed purchaser.

57

Purchaser Records

Interviews of the first purchaser may lead to subsequent purchasers or the perpetrator.

PMFs do not bear a serial number or other markings of a licensed manufacturer or importer. As such, administrative traces to individual purchasers are difficult at best.




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FORENSIC TRACING

The forensic science of **firearm and toolmark identification**.

-A “tool” is the harder of two objects. The surface of the harder object leaves a mark on the softer material of the other object.

The comparison microscope is the primary instrument used

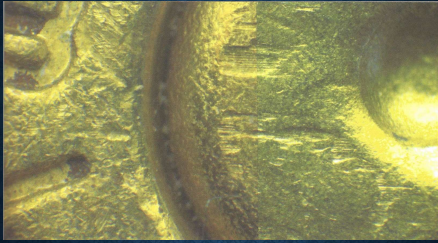


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FIRED CASINGS FROM TWO DIFFERENT CRIME SCENES



60



COMPARISON MICROSCOPE VIEW

61

INTEGRATED BALLISTIC IDENTIFICATION SYSTEM

I.B.I.S.

- Software and process that creates a digital map of the individual marks on fired cartridge cases or bullets.
- A crime lab image captured with an IBIS scan is converted into a standardized mappable/searchable product.
- The IBIS quality scan is uploaded into NIBIN to be compared against images of other uploaded scans.

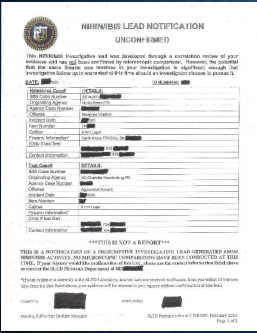
62

National Integrated Ballistic Information Network (NIBIN)

- The network of databases containing searchable digital "maps"
- These "maps" of individual casings uploads from CGIC sites
- The result is to find presumptive matches that link the use of a firearm at one location to its subsequent use.



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NIBIN Lead Notifications

&

Crime Gun information Centers

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FORENSIC TRACING LOCATIONS ON FIREARMS



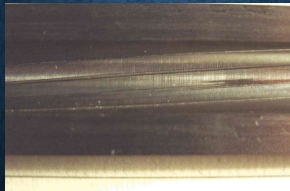
65




Rimfire casings can be compared as well

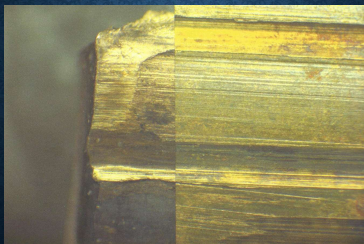
66

Barrel cross section with machining toolmarks



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RIFLING COMPARISONS



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HEAD STAMPS

They can be persuasive circumstantial evidence



69

Partially Empty Ammo Boxes

Don't overlook them during search warrants. Check round counts in the weapons and spent casings and their head stamps from the scene against the number of rounds missing from the box.



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Forensic Identification of the Shooter



Who possessed the gun at the time of the crime?.

- Fingerprinting
 - Firearm
 - Magazine
 - Casings

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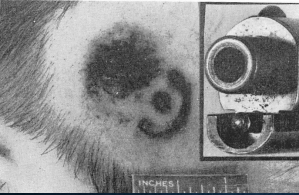
DNA swabs for entry into CODIS database or comparison against suspect standard

- Swab trigger and grip area
- Magazine
- Live round in magazine
- Fired casings as well



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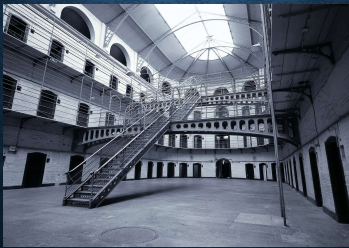
Forensic Identification Victim DNA



Based on the forensic pathology of your case, swab the muzzle area of a suspected weapon for possible victim DNA

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THANKS FOR WHAT YOU DO EVERY DAY



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